



creating the environment for job growth

chapter six

President Bush frequently calls on governmental entities to streamline regulation. Good rules and regulations protect employees in the workplace. But sometimes regulations become unnecessarily burdensome and end up hurting businesses and the workers they were designed to protect. We must make sure that the costs of regulations do not outweigh their benefits.

The Department of Labor works to preserve a delicate balance. We need to protect workers' interests without stifling the ability of employers to expand their businesses and hire more employees. By eliminating unnecessary and burdensome regulations and creating smarter, more effective regulations, the Department has helped foster new job growth within a safe working environment.

This chapter describes the progress that the Department of Labor has made in streamlining regulations. It concludes with a discussion of the challenges of addressing the regulatory problems in the provision of health insurance.

Regulatory Agenda

The Department of Labor routinely issues regulations that implement new statutory requirements from Congress. It also revises regulations to reflect current economic realities and workplace conditions. Executive Order 12866 (1993) and the Regulatory Flexibility Act (1981) require semiannual publication in the *Federal Register* of an agenda of regulations, both regulations under active consideration for promulgation, proposal, or review during the coming one-year period, and those it expects to propose or promulgate that are likely to have a "significant economic effect on a substantial number of small entities."

Proposed regulations are recorded in the Department's Regulatory Agenda twice a year, with some items added as agencies start new rules and others removed due to long-term inaction. Over the years proposed regulations accumulated, and the agenda came to include many items on which no action had been taken for long periods and/or for which action was no longer necessary.

Therefore, in 2001 the Department began a systematic review of the Regulatory Agenda. Each

item was evaluated for retention or withdrawal based on the Administration's policy objectives, the Secretary's priorities, statutory requirements, the length of time the item had remained on the Agenda without action, and whether circumstances indicate the rule is no longer needed.

The Department has reduced the size of its Regulatory Agenda from about 145 to about 80 items in three years. These items accurately reflect the Department's Regulatory Agenda, allowing the public to participate more fully in the regulatory process. (See Chart 6.1.) Additionally, the Department has prioritized and issued new regulations that achieve the same results more efficiently, protecting workers and leaving businesses with more resources for hiring.

The Policy Planning Board

In August 2001, after a review of existing procedures, the Policy Planning Board (PPB) was established to provide a Department-wide mechanism for evaluating proposed policies,

particularly regulatory policies, with oversight by the Secretary.

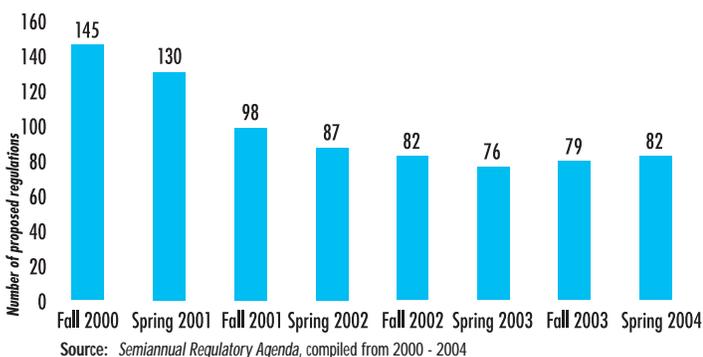
The PPB is responsible for reviewing, developing, and advancing all major policy initiatives planned by DOL and its agencies. The purpose of the PPB is to assure that such proposed actions have been fully considered by the appropriate agencies, and that such actions are consistent with Department and Administration policy priorities. Another key function of the Board is to manage policy initiatives that cross agency lines or require interdepartmental coordination. All actions reviewed by the PPB are ultimately forwarded to the Secretary for final approval prior to their implementation, transmittal to the Office of Management and Budget (OMB), or publication in the *Federal Register*.

Implementation of Regulatory Priorities

With a reduction in outdated items, the Department has been able to focus on completing its top regulatory priorities. These include transparency in union accounting, with a new Form LM-2 (Labor Organization Annual Report); regulations concerning the Senior Community Service Employment Program (SCSEP); and new overtime rules which strengthened and clarified overtime protection.

On October 9, 2003, the Department published the final rule containing changes to Form LM-2 used by large labor organizations to file annual financial reports. The American workforce and labor organizations have changed dramatically over the last 40 years, yet the form used by labor organizations to report financial information had not changed significantly in the same time period.

Chart 6.1 DOL Regulatory Agenda, 2000 - 2004



The recent changes to Form LM-2 reflect the Department's belief that more detailed and transparent reporting of labor organizations' financial information will be more useful to union members, more effectively deter fraud, and enable investigators to more easily discover fraud when it occurs. On March 26, 2004, fully tested versions of the software for the revised LM-2 and new Form T-1 (Trust Annual Report), user guides, and electronic instructions were made available for downloading from the web site of the Department's Office of Labor-Management Standards.

On April 9, 2004, new regulations for the SCSEP were issued in the *Federal Register*. The SCSEP fosters and promotes useful part-time opportunities in community service activities for persons with low incomes who are 55 years of age or older.

The new SCSEP regulations were occasioned by the Older Americans Act (OAA) Amendments of 2000. The OAA Amendments expanded the program's purpose to formally recognize unsubsidized employment as a program goal. Other major areas of change include stronger linkages with the One-Stop Delivery System; an annual State Senior Employment Services Coordination Plan; performance measures; and corrective actions for grantees that fail to meet the performance measures.

On April 23, 2004, the Department issued the New Overtime Security Rules, which strengthened and clarified overtime protections. The overtime protections intended by the FLSA had eroded over the decades. The salary test for classifying employees as exempt from



overtime requirements was last updated in 1975, and the job duties test had not been changed since 1949.

Under the New Overtime Security Rules, workers earning less than \$23,660 per year — or \$455 per week — are guaranteed overtime protection. As a result, 1.3 million low-wage workers will gain the right to overtime, and an additional 5.4 million workers will have their overtime rights strengthened. The FairPay regulations became effective August 23, 2004.

Each of these three regulatory initiatives was initiated and published as a final rule during Secretary Chao's administration. In addition, Table 6-1 enumerates other regulatory initiatives that were initiated and finalized during the same period.

The Department has identified 19 high priority items for regulatory action. Seven of them address health and safety issues, which are central to the Department's mission and which represent a major focus of the Secretary. Two agencies, the Mine Safety and Health Administration (MSHA) and the Occupational Safety and Health Administration (OSHA) are responsible for these initiatives.

MSHA's priorities involve asbestos exposure limits, diesel particulate matter, and coal mine dust monitoring. Four of OSHA's priorities address health standards concerning respiratory protection, exposure to crystalline silica, hexavalent chromium, and streamlining and updating a number of other health standards in ways that enhance compliance. A fifth OSHA priority project – a fire protection standard for shipyards – will help prevent deaths and injuries.

Table 6.1 Regulations Initiated and Completed, 2001-2004

Disaster Unemployment Assistance An Interim Final Rule
Senior Community Service Employment Program
E-filing of Labor Condition Applications
Jobs For Veterans Act of 2002
Overtime Regulations Under Part 541 of the Fair Labor Standards Act
Criteria and Procedures for Proposed Assessment of Civil Penalties
Diesel Particulate Exposure of Underground Metal and Nonmetal Miners
Emergency Evacuation
Alternate Locking Devices for Plug and Receptacle-Type Connectors on Mobile Battery-Powered Machines
Standards for Sanitary Toilets in Coal Mines
Seat Belts for Off-Road Work Machines and Wheeled Agricultural Tractors at Metal and Nonmetal Mines
Miscellaneous Technology Improvements (Methane Testing)
Commercial Diving Operations;
AIR21 Whistleblowers
Signs, Signals and Barricades
Changes to OSHA State Plans
Occupational Injury and Illness Recording and Reporting Requirements
Sarbanes-Oxley Whistleblower Protection Regulations
Pipeline Safety Whistleblower Protection Regulations
Exemption for Religious Activities from Affirmative Action and Nondiscrimination Obligations of Government Contractors
Unemployment Insurance Trust Fund Integrity
Audits of States, Local Governments and Non-Profits
Audit Requirements for Grants, Contracts, and Other Agreements
Debarment and Suspension and Requirements for Drug Free Workplace
DOL Acquisition Regulations
Claims for Compensation Under the Energy Employees' Compensation Act
Delinquent Filer Voluntary Correction Program
Notice of Blackout Periods to Pension Plan Participants and Beneficiaries
Civil Penalties Under ERISA Section 502 Subpart C(7)

Source: Office of the Assistant Secretary for Policy, Department of Labor

Consistent with the Secretary's priority for ensuring pension and health benefit security, the Employee Benefits Security Administration (EBSA) will emphasize finalizing regulations that facilitate the payment of benefits from pension plans that have been abandoned by their sponsors and facilitate the rollover of missing participant distributions into individual retirement accounts in an effort to preserve retirement income.

Finally, the Secretary has prioritized protecting the employment rights of service members as they return to the civilian workforce.

Implementation of Statutory Responsibilities for Sarbanes-Oxley

The Sarbanes-Oxley Act of 2002 required the Department to issue regulations implementing the Act's whistleblower provisions and its provisions governing notices to employees of blackout periods, during which they would be unable to trade in employer stock held in their 401(k)-type plans. Final Blackout Period regulations were issued in January 2003, and whistleblower regulations were issued in May 2003. In addition, final whistleblower regulations required by the 2000 Wendell H. Ford Aviation Investment and Reform Act for the 21st Century were published in March 2003.

This year, the Department specifically addressed the goal of a more competitive workforce. This requires the promotion of job flexibility and the minimization of regulatory burden. DOL agencies are in the beginning stages of planning exactly how they will examine, and possibly adjust, the regulatory environment imposed on employers in ways that accommodate evolving non-traditional work arrangements and the need to reduce regulatory burden, while keeping necessary worker protections in place.

Rising Health Costs Harm Job Creation

After averaging less than 1 percent per year from 1994-1997, health benefit costs began to climb again in 1998, increasing at annual rates of 14.7 percent in 2002 and 10.1 percent in 2003. An earlier period of high health cost inflation during the late 1980s and early 1990s is often cited as causing the shift away from traditional insurance plans, where individuals pay a percent of the costs, to managed care, where people generally pay a lump sum as copayment. This period of inflation also led to

Addressing Regulatory Problems in the Provision of Health Insurance

For most Americans, health insurance is provided through the workplace. Since World War II, this system of employer-provided coverage has been an integral part of a health care system that

is among the best in the world, but the system today faces challenges in the form of rising costs and a corresponding declining level of plan sponsorship. Controlling costs and finding new, more efficient ways to provide coverage are the key challenges facing the American system of private health insurance.



higher cost sharing requirements for employees and a decline of group health plan sponsorship by employers.

Rising health insurance costs create competitive disadvantages for American companies in the global marketplace. Indeed, William Clay Ford Jr., the chairman of Ford Motor Co., last year said that the rising cost of health care puts U.S. companies at a competitive disadvantage. Not surprisingly, as costs have increased and employers have felt the pinch, the segment of the American population with employer-sponsored coverage has dropped from approximately 70 percent in 1987 to 61 percent today.

More Access and More Choices in Health Care

The President's goal is to ensure that Americans can choose and afford private health care coverage that best fits their needs. The U.S. health care system can provide the best care in the world, but rising costs and loss of control to government and health plan bureaucrats threaten to keep patients from getting state-of-the-art care.

The President's agenda includes:

- **Health Savings Accounts (HSAs), which combine low-cost, high-deductible health insurance with tax-free savings accounts to pay for health care expenses. The President has also proposed to make insurance premiums associated with HSAs tax deductible.**
- **Association Health Plans (AHPs) to give America's working families greater access to affordable health insurance. By allowing small businesses to band together and negotiate on behalf of their employees and their families, AHPs would help small businesses and employees obtain health insurance at an affordable price, much like large employers and unions.**
- **Strengthening Medicare. President Bush signed legislation in 2003 to establish a prescription drug benefit under Medicare. Under this plan, private health plans will provide seniors better coverage at affordable prices by using competition, not government price-setting. And seniors will be able to choose the health care plan that best fits their needs instead of having that choice made by the government.**

Given that the period of health cost inflation in the late 1980s led to some restructuring of employment-based health insurance, the current rise in costs can be expected to have an effect on insurance markets. What is unknown at this time is how employers and employees will respond to rising costs. Will "consumer driven" approaches and high deductibles become the norm? Will more employers get out of the benefits business altogether?

Employer Size Makes a Difference

For a variety of reasons, insurers typically charge small firms more per employee than large firms for comparable coverage. According to the General Accounting Office, insurers incur higher marketing, underwriting and administrative costs when providing health care coverage to small employers than to large employers – and they pass those costs on to small firms. Small company premiums are typically 20 percent to 30 percent higher than those of large, self-insured companies with similar claims experience. And, as noted above, the cost of coverage continues to rise.

The difficulties that small businesses face in trying to offer quality, affordable health insurance help to explain a significant part of America's uninsurance problem. Small firms employ 42 percent of all workers. Yet these workers and their families comprise 60 percent of the working uninsured.

The Solution: Empower Small Employers

The Bush Administration is pursuing a comprehensive health care agenda designed to improve health care accessibility and affordability for every American, consistent with the Pres-

ident's call for an ownership society. This agenda focuses on expanding coverage for small businesses through Association Health Plans (AHPs), as well as expanding coverage for individuals through new arrangements such as Health Savings Accounts, enacted as part of last year's comprehensive Medicare reform.

AHPs will improve the health insurance outlook for small employers by breaking down state-by-state market barriers that discourage small employers from offering coverage. Regulated by the Department of Labor, AHPs will utilize uniform regulation and market transparency to enhance national product uniformity and efficiency. The result will be high quality, lower cost health coverage that will make small employers more competitive.

How would they work? In an AHP, small businesses could join together across state lines through *bona fide* trade and professional associations to purchase health benefits. By pooling their resources, small businesses would enjoy greater bargaining power, economies of scale, administrative efficiencies, and more uniform regulation, all combining to make coverage more affordable.

By grouping small employers together to purchase coverage, AHPs will be able to act more like large employers and offer lower cost coverage to employers, employees and their families. If the AHP chooses to purchase insurance, it will be in a better position to negotiate with insurers regarding the terms and costs of coverage than small employers acting individually.



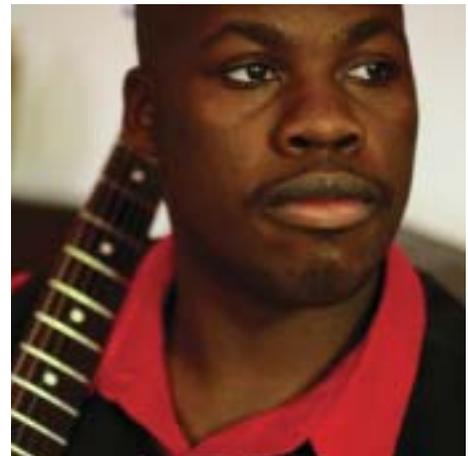
Health Savings Accounts (HSAs)

Millions of Americans will get help with their out-of-pocket medical expenses through President Bush's support of health savings accounts (HSAs). The Medicare bill that President Bush signed into law establishes new tax-free savings accounts for people and groups who purchase affordable high-deductible health plans. Those who take advantage of these accounts will save substantial sums on health insurance premiums and gain more control over health care spending. The tax-free, portable accounts will help families pay their routine medical expenses and provide a tax-preferred means of saving for future health care needs.

New health insurance deductions will make coverage more affordable to millions of Americans whose employers do not provide health benefits. The President's proposal will allow individuals who establish HSAs to deduct the premiums they pay for their low-premium, high-deductible health insurance policies. This new deduction will be available to taxpayers whether or not they itemize. It will reduce the net cost of these policies and encourage the use of HSAs for saving for health care needs and making wise, cost-effective health care choices.

Tens of thousands of people already are saving on their health care costs through HSAs. These accounts can save families thousands of dollars on their health insurance premiums. Americans can deposit some or all of these savings into their tax-free accounts and use the money for current health care needs and to save for future medical expenses. Employers also can contribute to these accounts, which the employee controls.

Instead of sending more money off to insurance companies in the form of higher premiums, families can keep their savings in an account that belongs to them, not to their employer or to an insurance company.



AHPs will also enjoy economies of scale in the administration of plans. They will give insurers a vehicle to market and distribute policies to many small employers at once. By offering a well-selected and stable choice of policies to members, AHPs can help slow small employers' otherwise costly movements from one insurer to another.

In addition, AHPs will allow small businesses to enjoy a more uniform regulatory system. Just as large employers and unions are able to offer the same health plan to their workers and members regardless of which state they live in, AHPs will allow small businesses to join together across state lines to purchase uniform health

benefits under the protective umbrella of ERISA.

It is important to note, however, that the pending AHP legislation leaves in place major elements of state insurance regulation. Much as in the current group health marketplace, insurers selling policies to AHPs would be regulated by the states.

The AHP legislation passed by the United States House of Representatives preserves important state consumer protections for these insurers, including solvency standards and prompt pay laws. AHPs that offer self-insured coverage will be subject to a single, effective, national certification and oversight process administered by the Department of Labor. The legislation provides strict new solvency standards for these plans to protect consumers.

AHPs will help ensure that small employers will not be denied insurance coverage or be priced out of the market due to the health of their employees. An employer with high claims experience would be offered the same coverage options as other employers within the sponsoring association. Under the current legislative proposal, AHPs would explicitly be prohibited from setting premium rates based on health status, effectively restricting their ability to engage in favorable risk selection, or so-called “cherry-picking.”

Small businesses obtaining insurance through AHPs could enjoy significant premium reductions. According to the Congressional Budget Office (CBO), the average savings would be 13 percent and could be as much as 25 percent per employer.



CBO further estimated that, because insurance will be more affordable, as many as *two million* Americans whose employers do not offer insurance today will be brought into the employment-based health insurance system.

AHPs will give small employers and other members of trade and professional associations real choices in health insurance options. By providing greater choice and greater efficiency, AHPs will make the market for health insurance more dynamic, which will be good for all Americans.

Conclusions

We need regulations to protect our workers, but at the same time, we must remember these regulations impose real administrative and monitoring costs on both businesses and enforcement agencies. Designing an ideal regulatory system requires that we ensure that the benefits of regulations are real and are greater than the costs of compliance.

The Department of Labor has successfully streamlined regulations over the past three years. We have made sure regulations make economic sense and considered their effects on small businesses. Both employers and workers have benefited. Employers have more resources for hiring employees, and workers have more opportunities to find jobs.



Notes

ⁱ Mercer National Survey of Employer-Sponsored Health Plans, 2004.

ⁱⁱ A “group health plan” is an ERISA-governed welfare benefit plan that provides health coverage. Employers and unions may finance such coverage through commercial insurance, or they may “self-insure,” that is, pay claims out of their own assets. This is an important distinction from a regulatory perspective because most “self-insured” plans are subject solely to Department of Labor oversight; states retain jurisdiction over commercial insurance products.

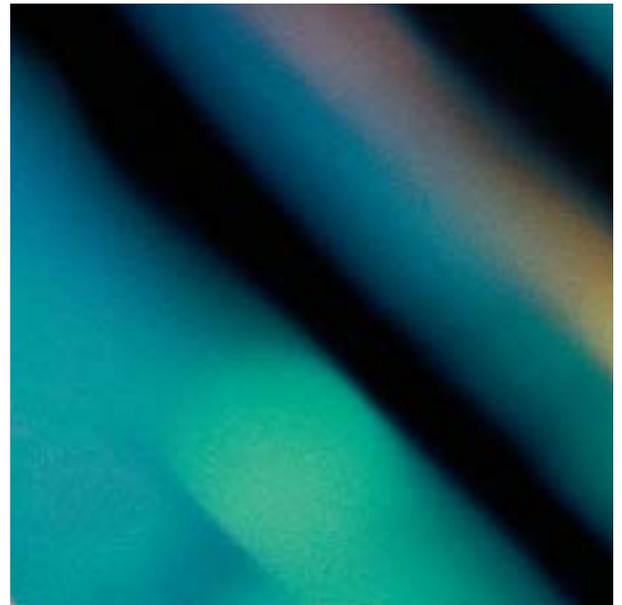
ⁱⁱⁱ U.S. General Accounting Office, “Private Health Insurance: Small Employers Continue to Face Challenges in Providing Coverage,” GAO-02-8; and “Private Health Insurance: Number and Market Share of Carriers in the Small Group Health Insurance Market,” GAO-02-536R. Insurers must market and distribute their policies to a very large number of unconnected employers. Insurers also must compensate agents for each small policy sold or renewed. Some costs, such as the cost of collecting detailed medical histories for purposes of medical underwriting, are layered on each time an employer changes insurers.

^{iv} Actuarial Research Corporation. Cost drivers include small businesses’ administrative overhead, insurance company marketing and underwriting expenses, adverse selection, and state regulatory burdens.

^v Department of Labor estimates of working families’ health insurance status, based on the Census Bureau’s annual March Current Population Survey.

^{vi} Congressional Budget Office, “Increasing Small-Firm Health Insurance Coverage through Association Health Plans and Healthmarts,” January 2000.





the challenges ahead



